Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	CC Docket No. 98-170
Truth-in-Billing and Billing Format	)	

SUPPORT/OPPOSITION OF U S WEST COMMUNICATIONS, INC. TO PETITIONS FOR RECONSIDERATION

I. INTRODUCTION

U S WEST Communications, Inc. ("U S WEST") supports those parties urging that the Federal Communications Commission ("FCC" or "Commission") reconsider aspects of its Truth-in-Billing rules[1] as those rules were pronounced in the Truth-in-Billing Order.[2] Given that U S WEST sought reconsideration with respect to rule 64.2001(a)(2)(ii) and (c) (the former dealing with the Commission's requirement that "new service providers" be highlighted on carrier bills; the latter dealing with the identification of services as "deniable" or "nondeniable"), we

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[1] Petitions for Reconsideration and/or Clarification, filed July 26, 1999 by AT&T Corp. ("AT&T"), MCI WorldCom, Inc. ("MCI WorldCom"), National Telephone Cooperative Association ("NTCA"), SBC Communications Inc. ("SBC"), United States Telephone Association ("USTA") and U S WEST.

[2] In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 7492 (1999) ("Truth-in-Billing Order"); pets. for recon. pending; pets. for rev. pending, The Bell Atlantic Telephone Companies v. FCC, File No. 99-1844 (1st Cir.); Pilgrim Telephone, Inc. v. FCC, File No. 99-1821 (1st Cir.).

Per the recent Public Notice issued by the Commission, there has not yet been established a firm effective date for the Commission's Truth-in-Billing rules. Public Notice, Enforcement Division of the Common Carrier Bureau Announces Delayed Effective Date of Truth-In-Billing Rules in CC Docket 98-170, DA 99-1423, rel. July 20, 1999.

obviously support those who present similar requests for reconsideration.[3]

We oppose those requests for reconsideration presented by MCI WorldCom that would, basically, operate to reform binding billing and collection contracts to which MCI WorldCom is currently a party. Specifically, the Commission must not interfere with LEC editorial control over its bill content or format. Moreover, the Commission should not insinuate itself into the matter of how billing costs associated with third-party billing are recovered, given that such is currently the subject matter of negotiated contracts between competent parties.

II. POSITIONS ADVANCED WITH WHICH U S WEST AGREES

A. Neither Sections 201(b) nor 258 Support the Commission's Mandates

U S WEST supports those who argue that the Commission's jurisdictional claims are overstated and cannot be supported by the statutes cited. We agree with USTA that Section 258 provides no authority for the Commission's new service provider mandate beyond possible application to new presubscribed carriers.[4] This is because billings for other services do not involve unlawful changes in carriers –

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[3] SBC seeks reconsideration, if necessary, on the issue of whether there is a "single provider" or multiple providers needing identification in those cases where a service package included components actually provisioned by multiple legal entities. SBC at 2-4. While of the opinion that the issue raised by SBC requires neither reconsideration or clarification, U S WEST supports the SBC position that a package billed by a single provider – regardless of the number of providers that might be providing inputs to the package – under the Commission's rules should only require the "identification" of the providing/billing provider. As stated by SBC "to the extent that those services become part of a package of services that is marketed to customers by a single provider, that single provider is, so far as the customer is concerned, the service provider for that package." SBC at 2.

[4] USTA at 2-3.

the foundation for any relevant application of Section 258.

We also support MCI WorldCom's legal argument, made in the context of challenging the Commission's "deniable/non-deniable" mandate that neither Section 201(b) nor Section 258 support the Commission's exercise of jurisdiction. Section 201(b) extends, at most, to Commission jurisdiction over the billing of interstate carriers for interstate charges. How the billing of such charges on a LEC bill is presented, *vis-à-vis* a local end-user customer, is beyond the reach of that statutory provision. Moreover, as U S WEST asserted in our own Petition for Reconsideration, and as MCI WorldCom correctly observes in its Petition, "the Commission has not identified . . . any linkage between a customer knowing which charges, if not paid, will result in termination of basic service, and the customer's ability to prevent or detect unauthorized conversions."[5]

B. The Requirement Associated With "Highlighting Service Providers" Should Be Eliminated Or, At A Minimum, Materially Modified

Any requirement that carriers do more than identify in a clear and conspicuous fashion the new service provider is arbitrary and capricious. Such a requirement clearly cannot be defended as required to "protect" consumers, since there are other – less costly and less intrusive – means by which the Commission's ends can be materially accomplished. A bullish recalcitrance with regard to eliminating or modifying the rule will only embroil carriers and the Commission in

[5] MCI WorldCom at 5, 6 ("The Commission's deniable/nondeniable principle does not promote, and is unrelated to, the goal of reducing and preventing unauthorized conversions, yet applies to interstate and intrastate services.").

"needless and protracted expense . . . and litigation."[6]

U S WEST would prefer the total elimination of the rule to any attempt to change its scope or modify its language (for example, to accommodate bi-monthly billings[7] or dial-around carriers/offerings).[8] The lack of information systems technology to support the requirement – and the high cost of creating such systems[9] – argues for a total vacation of the rule rather than modification.

However, if the Commission refuses to alter the fundamental notification requirement, it must confirm – as the current Truth-in-Billing Order makes clear – that carriers who are "new" must be responsible for notifying those who bill for them of their "new" status.[10] Also, it should slightly modify the notification obligation as one assessed by the submission of billing information, rather than actual billing presentation, as USTA argues.[11] Only in this way can the cost of the notification obligation be managed at any reasonable level (e.g., LECs would not have to create "stare and compare" systems but would simply rely on a code passed to them by the "new" provider.).[12]

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[6] USTA at 4.

[7] See USTA at 4 (commenting on the incompatibility of the current rule language with carriers who engage in bi-monthly billings).

[8] MCI WorldCom at 11.

[9] Compare U S WEST Petition for Reconsideration at 18-22 and its Attached Affidavit of Dale Breckon at 6.

[10] Truth-in-Billing Order ¶ 25. And see USTA at 5.

[11] USTA at 6-7; MCI WorldCom at 11.

[12] Of course, even this type of activity would require nationwide standards accomplished through an organization such as the Ordering and Billing Forum

C. The Requirement Involving The Identification Of Charges As "Deniable" Or "Non-deniable" Should Be Eliminated

Nor should any relief granted in this area be confined to business customers, as suggested by AT&T.[13] While we can certainly support AT&T's position with respect to that market segment, the fact remains that for U S WEST the Commission's mandates are most problematic with respect to residential subscribers. Indeed, even AT&T acknowledges that "the technical and programming efforts to implement [the Commission's mandates] in the case of residential customers are not inconsiderable in their own right."[14] Thus, we urge that any "alternative" that reduces the burden the Commission's rules currently impose on carriers should be permitted to be extended to all customer segments.

D. The Commission Should Reverse Its Position Regarding Standard, Uniform "Terms" For End-User Charges Associated With Federal Regulatory Activity

U S WEST supports AT&T's position regarding the Commission's mandates regarding a standard nomenclature to be used with respect to end-user charges associated with federal regulatory action.[15] Like AT&T, U S WEST filed comments on this matter in July.[16] Those comments are attached to this filing for the

("OBF"). And see USTA at 7, noting that it takes "the industry months of consultation to agree to and implement [billing system] changes."

[13] AT&T at 4-7. Compare MCI WorldCom at 8-9, 12 (arguing that negotiated billing arrangements/formats should be exempt from any FCC mandates in the area of format or content).

[14] AT&T at 4.

[15] Id. at 1-3.

[16] U S WEST Comments, filed July 9, 1999.

Commission's ease of reference and are incorporated into this filing by this reference. Those comments make clear, as does the AT&T Petition, that the Commission's mandates in the area of a standard nomenclature are ill advised from both a legal and policy perspective. The Commission should reverse its course in this area and leave the nomenclature associated with charges on carrier bills to the discretion of the submitting carrier.

III. POSITIONS OPPOSED BY U S WEST

A. The Commission Should Not Interfere With LEC Editorial Control Over Their Bills

MCI WorldCom asks the Commission's intercession with respect to its contractual obligations as defined under negotiated billing and collections contracts with LECs.[17] The Commission should decline to intervene in this relationship, especially with respect to hampering a LEC's editorial control over its bill content or bill format.

MCI WorldCom for years has been on a mission to extricate itself from the contractual commitments it negotiates with LECs in the area of billing and collection.[18] The Commission should make clear to MCI WorldCom that it needs to look to its own negotiators to secure the kind of editorial control it desires over content that appears in LEC bills (i.e., the "message or labeling that is otherwise

[17] MCI WorldCom at 8-9. MCI WorldCom pressed this same argument in its comments filed with respect to the various petitions for relief, publicly noticed by the Commission on August 13, 1999. Public Notice, DA 99-1616. See Comments of MCI WorldCom, filed herein, Sep. 3, 1999 at 10 n.23.

lawful").[19] To the extent that almost all contracts have provisions requiring that they "comply with" or "accommodate" applicable federal and state law, obligations imposed on interstate carriers are accommodated by billing LECs, albeit not for free and not always in the language that IXCs might want. That accommodation, done *via* the billing agent for the IXC, makes clear that the obligation itself can (and should) still run to the IXC without concern over fairness or lack of control over the actions necessary to achieve compliance with the Commission's mandates.

B. The Commission Should Make Clear That The Carriers Obligated To Conform Their Conduct To The Commission's Mandates Must Pay The Freight

Again, trying to avoid contractual agreements between it and its agents,[20] MCI WorldCom argues that costs for changes in bill format should be shared among carriers since, in its opinion, all carriers benefit from the changes as do all of their customers.[21] MCI WorldCom here attempts a back-door reformation of its existing contractual obligations and the Commission should decline to provide them with such relief.

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[18] See Public Notice, MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services, 12 FCC Rcd. 8366 (1997).

[19] MCI WorldCom at 8.

[20] Currently, at least U S WEST's billing and collection contracts require that the principal on whose behalf the bill is being rendered to pay for all costs associated with modifying the bill to conform to legal obligations.

[21] MCI WorldCom at 10-11.

IV. CONCLUSION

For the above reasons, sound legal and policy positions support modifying the Commission's Truth-in-Billing Order along the lines identified above. On the other hand, the positions pressed by MCI WorldCom around the matters of billing content and cost recovery would make a mockery out of competent, arms-length negotiations and contract principles and should be rejected.

Respectfully submitted,

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September 14, 1999

ATTACHMENT

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COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. responds to the Federal Communications Commission's ("FCC" or "Commission") Further Notice aspect of its Truth-in-Billing Order,[1] inquiring into the appropriate nomenclature for certain charges assessed by carriers to their customers, where the genesis of the charge involved federal regulatory activity. The Commission has determined that the current nomenclature used by carriers is confusing to customers;[2] and it seeks comment on certain terms it tentatively concludes will reduce, if not eliminate such confusion.[3]

As will other carriers, U S WEST will probably ask the Commission to reconsider this portion of its Truth-in-Billing Order and its constituent rules, in conjunction with the reconsideration process. We agree with Commissioners Powell and Furchtgott-Roth that the Commission has crossed the line between appropriate regulation and interference

[1] In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, rel. May 11, 1999 ("Truth-in-Billing Order" or "NPRM," as the context dictates).

[2] Id. at ¶¶ 49, 53.

[3] Id. at ¶ 71.

with the carrier/customer relationship.[4] And, in some cases (probably a large number of cases, actually), it crosses that line in a manner that will involve the incurrence of some costs with only incremental, if any, consumer benefit.

Beyond the constitutional "legalities" of the Commission's decision and proposals lie the questions of sound telecommunications policy and the appropriate role of regulatory authority *vis-à-vis* the carrier-customer relationship. It cannot honestly be said that the term "Federal Universal Service" charge (the Commission's proposed language)[5] is more or less accurate than the current language U S WEST has incorporated in our bills with respect to our Personalized Communications ("PCS") service. That language is "Federal Universal Service **Fund**."[6]

In a similar vein, the Commission's proposed language regarding number portability charges is "Number Portability," while U S WEST's language is "Federal Charge -- Service Provider Number Portability."[7] Again, the Commission's "choice" of language is no more truthful or accurate or empirically less confusing than that chosen by U S WEST or other carriers. For these reasons, U S WEST urges the Commission to include U S WEST's language in a lexicon of "approved terms" for the assessment of universal service and number portability charges.

If the Commission does not do so, U S WEST will be faced with one of two

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[4] See Separate Statement of Commissioner Michael K. Powell (concurring) and Dissenting Statement of Commissioner Harold Furchtgott-Roth, released with the NPRM.

[5] NPRM at ¶ 71.

[6] Emphasis added. And compare Truth-in-Billing Order at ¶ 51, referencing the phrase "Federal Universal Service Fee."

[7] Id. at ¶ 52, referencing phrases identical to that used by U S WEST, as well as "number portability surcharge," "local number portability service charge."

choices: It might decide to proceed with billing system/name changes, incurring costs that are absolutely devoid of market necessity to change what was accurate and truthful language in the first instance. Or, it might seek a waiver from the Commission to continue to use the terms on the grounds that the differences are essentially immaterial.

Should the Commission remain wedded to its proposals, it should be prepared to expeditiously address (i.e., as "expeditiously" as it requires reply comments in this proceeding) Petitions for Waiver and/or Forbearance. There is no good reason why a carrier -- especially as we approach the year 2000 -- should be required to muck around in its billing systems to change lines of text to accommodate a federal nomenclature not materially different or more disclosing than its own.

U S WEST urges the Commission to create a large lexicon of "approved terms," for these federally-related charges, such that carriers will have to incur no costs to change otherwise clear language on their bills. In the alternative, we hope the Commission will change its position on reconsideration or will adopt a liberal waiver policy with respect to phrases/terms that differ in immaterial ways from the phraseology adopted by the Commission.

Respectfully submitted,

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July 9, 1999

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused 1) the foregoing **SUPPORT/OPPOSITION OF U S WEST COMMUNICATIONS, INC. TO PETITIONS FOR RECONSIDERATION** to be filed electronically with the FCC by using its Electronic Comment Filing System, 2) a courtesy copy of the **SUPPORT/OPPOSITION** to be served, via hand delivery, upon the persons (marked with an asterisk) listed on the attached service list, and 3) a copy of the **SUPPORT/OPPOSITION** to be served, via first class United States mail, postage prepaid, upon all other persons listed on the attached service list.

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September 14, 1999

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